

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-003-13-1-5-00446-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-452-011.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated his 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 26, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Appeal Officers, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a vacant residential lot located at 3813 W. 27<sup>th</sup> Place Approx. in Gary.<sup>1</sup>
6. For 2013, the assessed value was \$3,400.
7. Petitioner requested an assessed value of \$2,500 on the Form 131.

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<sup>1</sup> Petitioner incorrectly entered “3913 W. 27<sup>th</sup> Ave (Approx)” on the Form 131. The parties agreed the address is 3813 W. 27<sup>th</sup> Place and the legal description and parcel number match that address.

## **Record**

8. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”) for the subject,

Respondent Exhibit 1:	PRC for the subject,
Respondent Exhibit 2:	Overhead GIS map,

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of Hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

## **Burden**

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value was \$3,400 for 2012 and 2013. Petitioner therefore has the burden of proof.

### **Summary of Parties’ Contentions**

14. Petitioner’s case:
  - a. Petitioner acquired the property for \$84 in 2009. He has been appealing the assessed value since that time. In 2013, the assessor valued the property at \$3,400 which was an “erroneous, false, and misleading” number according to Petitioner. In 2017, the assessor reduced the value to \$2,800, which is very close to Petitioner’s requested value of \$2,500. *Nowacki testimony; Pet’r Ex.2.*
  - b. Petitioner contends the area suffers from external obsolescence. It is a blighted, abandoned area that is infiltrated with a criminal element. The few people who developed the area are no longer present. There is little to no chance of any development in the future. *Nowacki testimony.*
  - c. Petitioner contends the Market Model on the PRC is incorrect and does not reflect the external obsolescence that affects the property or the blighted neighborhood condition. Other characteristics are also incorrect. The subject property does not have a paved road. There is only a gravel and dirt trail. There is no evidence of any utilities. For gas and electric to be available they would have to be somewhere adjacent to the property so Petitioner could tie into it. The fact that Respondent has reduced the assessed value shows the neighborhood is declining. Further, the Respondent describes the property as low-lying and it is sometimes under water. *Nowacki testimony; Pet’r Ex. 2.*
  - d. Petitioner contends that, contrary to testimony at the PTABOA hearing, the information on the PRC does matter. Where comments are warranted on the PRC, they should be as accurate as possible and not be erroneous, false, or misleading. *Nowacki testimony.*
  - e. Petitioner contends the address is identified as “approximate” because it is very difficult to clearly put an address on these properties because there are only vacant and abandoned buildings surrounding them. Even Respondent cannot assign an actual address to the subject. *Nowacki testimony.*
15. Respondent’s case:

- a. Respondent contends the address is considered approximate because no postal address has been established for that particular lot. It is not because the property is vacant or abandoned. He claims it is not Respondent's job to assign an address to the property. *Bauhan testimony*.
- b. Respondent contends Petitioner did not present any probative evidence so there is nothing to rebut. *Bauhan testimony*.

#### ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
  - b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment date at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. Petitioner contends the property should be assessed at \$2,500. Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Petitioner contends the property suffers from external obsolescence. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for such obsolescence, a property owner must identify the causes of the obsolescence present and quantify the

amount it believes should be applied to the property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Petitioner identified some issues that might be the cause of obsolescence, but failed to quantify any amount.

- e. Petitioner contends there are numerous errors on the PRC, specifically ones regarding the characteristics of the property. However, Petitioner did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.)
- f. Petitioner failed to make a prima facie case for changing the assessment. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **CONCLUSION**

- 17. Petitioner failed to establish a prima facie case that the 2013 assessed value is incorrect. Consequently, the Board finds for Respondent.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 value should not be changed.

ISSUED: March 21, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.